



# Eskom and Eon Consulting



## **The effectiveness of the Judicial System and its enforcement in successfully prosecuting electricity offenders**

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# Background

- SALGA estimates **R20 billion unaccounted** for in Utilities
- Mainly attributable to **Non- Technical Losses**
- Non technical losses are a result of **electricity offences**
  - Tampering and bypassing of meters
  - Cable theft
  - Illegal connection & reconnection
  - Unbilled / unregistered customers
  - Faulty meters

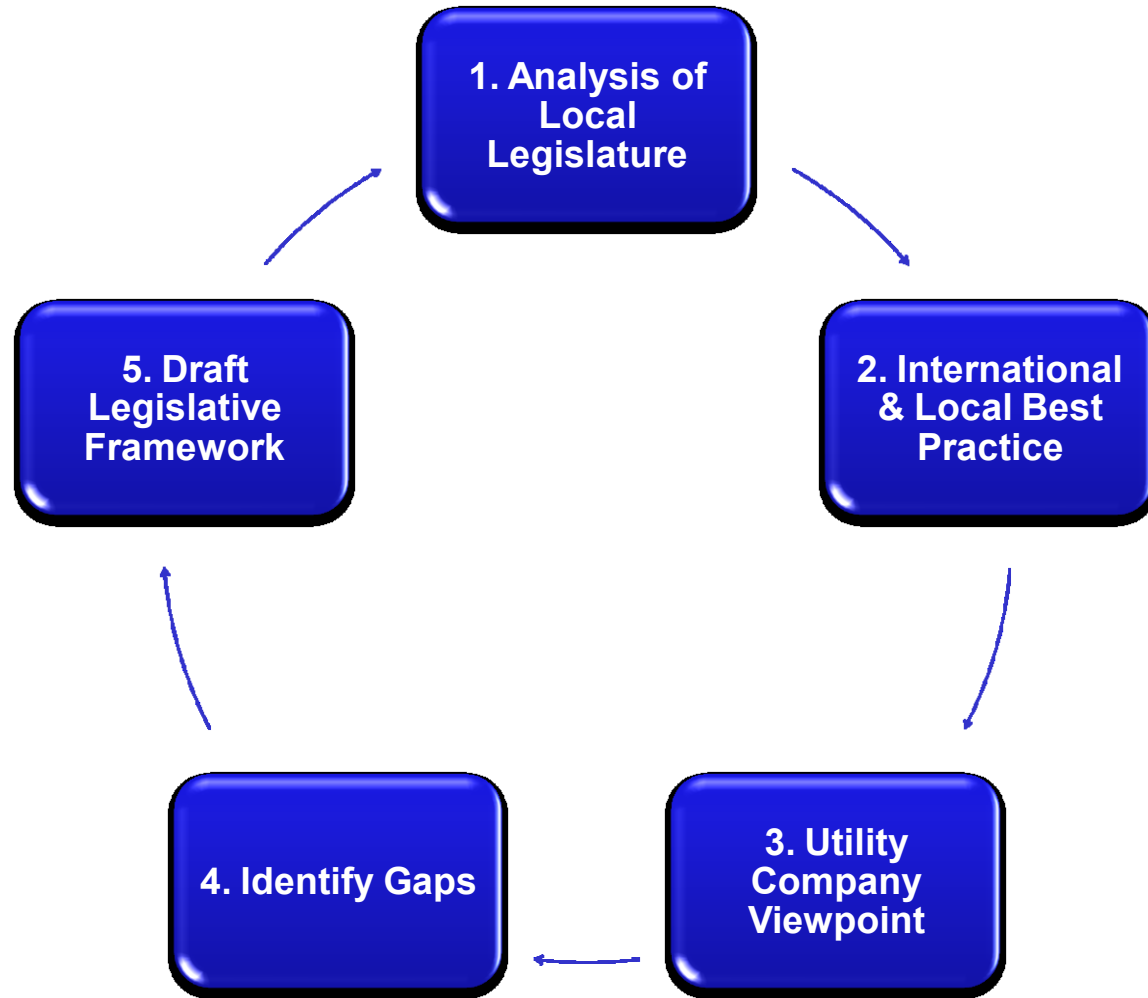
# Problem Statement

- **Ineffective legislation**
- The judiciary is **unsuccessful in prosecuting**
- **Conviction rates** for electricity related offences are low
- Penalties are either **insignificant or inappropriate**
- Lack of awareness (penalties) amongst public and employees
- The South African judiciary is **not empowered** to effectively prosecute electricity related offences

# Approach

- **Analysis** of current legislation
- Identify **gaps** within current legislature
- Determine the **ideal Legislation**
- Gain **industry and governmental support**
- **Adoption** of a legislative framework which is supportive of prosecution of offenders
- **Changes are required** within the utility & the Judicial system to implement legislation supportive

# Approach to Research



# Legislature relevant to electricity offences

- Electricity Regulation Act 2006
- Electricity Act 1987 (repealed)
- Occupational Health and Safety Act 1983
- Regional By – Laws
- Common Law
- Constitution

# Shortcomings in the Local Legal Environment

- **Section 27** of Electricity Act 1987 removed
- Repealed Electricity Regulation Act 2006 **does not include** this section
- The Electricity Regulation Act **does not provide for the prosecution of the offences** faced by the utility industry
- Currently: perpetrators are often charged for related/ **secondary offences**
- The Occupational Health & Safety Act does prohibit certain activities
- According to **Common Law** – electricity cannot be stolen
- Offenders **seldom prosecuted**
  - Lack of Initiative
  - No clear defined process
  - Little or no supporting Legislature



# Shortcomings in the Local Legal Environment

- Cannot **utilise By-laws** to assist in prosecutions owing to **geographical spread** of larger Utility Companies
- Judiciary is **not adequately informed/educated** about energy theft related issues to enforce prosecutions.
- Utilities **cannot legally electrify** unproclaimed land
  - Thus illegally connect from the grid

# International Energy Theft Environment

- Similar kinds of issues exist in other utilities worldwide
- **No clear definition** of electricity theft has been identified
  - UKRPA case study
  - Difference is the legislature **supports illegal abstraction**
- World Bank article approach – **two fold**
  - Development of a **new law**
  - Strengthening of **enforcement** mechanisms
  - Reorganising of **anti-corruption functions**
  - Reengineering of **business processes**

# Utility Company Viewpoint

- Losses are also due to **shortcomings within utility** companies
- Lack of:
  - Ownership and **initiative**
  - **Unaware** of the seriousness of the offences
- Employees and general public **unsure of process** to follow when reporting an offence
- **Insufficient number of local cases** to support effective prosecution

# Utility Company Viewpoint

- Utilities are forced to prosecute on the grounds of **secondary offences**
  - Occupational Health and Safety Act
  - Main efforts centred around this
- Law **enforcement is not applied** adequately
- Law enforcement agencies **do not view electricity offences as a priority crime**

**Leads to significant Financial and Operational Constraints**

# Land Mark Judgements

## S v Mintoor

- **Accused found guilty** of bypassing a meter
- Court **threw out** the case
- Electricity **cannot be stolen** - intangible

## Secondary Offences

- Mpumalanga
- Tampered meter – **live wire**
- 3 people died
- Punished on **secondary offence**

## Land Right

- Ethekeweni munic
- Land is **not proclaimed, no title deed**
- **Illegally connect** to the grid

# Proposed Solution

- Revise Electricity Regulation Act 2006 to
  - Provide **stronger prosecution** of offenders
  - Creation of **Specialised Courts** , with specialised prosecutors
  - To **define electricity theft** as a Primary offence
- **Implementation** of the revised Act
- Increase **awareness of the Judiciary**
- **Draft of Ideal** (Common Law & Constitution)
- **Section 27** as a base

# Draft of the Legislation

- Definitions to be included
  - clearly **define the apparatus** involved in the offence
    - point of consumption
    - point of control
    - point of supply
    - prepayment meters
    - service connection
    - service protective device
    - supply main

# Draft of the Legislation

- Offences
  - Thoroughly describes the **offence as per definition**
    - Branching off/diverting/ bypassing of/tampering with a meter
    - Only authorised persons connect to supply mains / service connection
    - Only authorised persons can reconnect that which has been disconnected
    - Cannot consume that which has been illegally connected



# Draft of the Legislation

- Penalties & punishment
  - Ensure **severity** in line with crime
  - **Monetary figure/ imprisonment** (as per criminal offence)
  - Example:
    - Tampering / bypassing of a meter (1<sup>st</sup> offence)
    - Appropriate fine of R10000 / imprisonment not exceeding 12 months / both.

# The way forward

- Gain **industry support** for amendment & implementation of legislation
- **Implementation** of proposed legislation
- **Stricter enforcement** of legislation and regulations
- **Adherence to defined value chain** processes
- **Incentive & penalty schemes** – regions combat non-technical losses and engage in revenue recovery
- **Role of NERSA** – NERSA regulation of policies, procedures and introduction of targets for non- technical losses at an area level
- **Harness public awareness** of offences and appropriate penalties



**Thank you**

